

ICI Comment Letter NYSE's Continued Listing Rule Proposal, April 2005

April 6, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Re: Proposed Amendments to NYSE Rules Relating to Continued Listing Standards (File No. SR-NYSE-2004-20)

Dear Mr. Katz:

The Investment Company Institute ¹ appreciates the opportunity to express its views on the New York Stock Exchange's proposed changes to its continued listing standards for closed-end investment companies registered under the Investment Company Act of 1940. ¹ While these changes may be appropriate for stand-alone closed-end funds, we oppose them for funds in a fund family. The proposal should be modified to provide a more equitable continued listing standard for closed-end funds in a fund family, in order to facilitate a fund family's ability to list all of its funds on the NYSE. ³

The proposal would change the continued listing standards for closed-end funds so that the NYSE would initiate suspension and delisting procedures with respect to any fund with an average market capitalization of below \$25 million (instead of \$15 million) over 30 consecutive trading days. The proposal does not take into account that the NYSE has distinct initial listing standards for closed-end funds in a family.

The NYSE previously recognized that while many fund families prefer to list all of their funds on the same market, they are not able to do so when one or more funds do not meet the exchange's size requirement. ⁴ To address this, the NYSE provided an alternative initial listing standard for closed-end funds, permitting the listing of all the funds in a family if, among other things, no one fund has a market

value of publicly held shares of less than \$30 million (rather than the \$60 million required for the listing of individual closed-end funds). Funds continue to prefer to list all of their funds on one market and have relied on this alternative listing standard to do so.

The Exchange's continued listing standards provide a way for the Exchange to evaluate the continued adequacy of the size of a company after its initial listing. In developing these standards, the Exchange recognized that lower threshold levels are appropriate for companies that are qualified for initial listing at a lower amount.⁵ Each closed-end fund that is part of a fund family must have a public market value of \$30 million to initially list while stand-alone closed-end funds must have a public market value of \$60 million. Despite this difference in initial listing standards, under the proposal any closed-end fund would be subject to delisting if its public market value fell below \$25 million. Therefore, stand-alone funds would be subject to delisting if they experience more than a 58 percent decline in market capitalization while individual funds in a family would be subject to delisting with only a decline of more than 16 percent.⁶

We believe that the proposed standard is particularly inappropriate given that transitory market conditions could cause a sudden and perhaps short-lived decline in capitalization that would not be truly indicative of the appropriateness of the fund's continued listing.⁷ Accordingly, we recommend that the NYSE modify the proposal to apply the current continued listing standard of \$15 million to a closed-end fund that lists as part of a family of funds.

Our approach would make the NYSE' size requirement for the continued listing of closed-end funds more proportional to its size requirements for their initial listing and make the standards more consistent with the Exchange's continued listing standards for other issuers. It also would further the NYSE's goal of making it easier for fund families to list all of their funds on one exchange.

* * *

The Institute appreciates the opportunity to comment on the proposal. If you have any questions, please contact me at (202) 218-3563.

Sincerely,

Dorothy M. Donohue
Associate Counsel

cc: Annemarie Tierney, Assistant General Counsel
Raymond Bell, Vice President, Client Service & New Business
Christopher Larsen, Client Service Representative
New York Stock Exchange

ENDNOTES

¹The Investment Company Institute is the national association of the American investment company industry.

² See SEC Release No. 34-51332 (March 8, 2005); 70 Fed. Reg. 12924 (March 16, 2005).

³ The Institute previously supported a NYSE proposal that modified initial listing standards for closed-end funds to facilitate the initial listing of all closed-end funds from a single fund family on the exchange. See Letter from Ari Burstein, Associate Counsel, Investment Company Institute to Jonathan G. Katz, Secretary, SEC, dated April 30, 2002.

⁴ See SEC Release No. 34-45684 (April 2, 2002); 68 FR 17092 (April 9, 2002) (SEC order approving a pilot program applying a new set of initial listing standards to closed-end funds in a single fund family).

⁵ See SEC Release No. 34-41648 (July 26, 1999); 64 Fed. Reg. 41986, 41990 (August 2, 1999) (SEC order approving, on a pilot basis, the NYSE's proposed codification of continued listing standards).

⁶ For other issuers, the NYSE has determined that more than a 50 percent decline in market capitalization is appropriate to trigger delisting. For example, real estate investment trusts would have to experience more than a 58 percent decline, companies that qualify under the valuation/revenue test more than a 50 percent decline, and companies that qualify under the affiliated company test more than an 85 percent decline, to be subject to delisting.

⁷ For example, negative press reports about events in foreign markets could cause concentrated selling of fund shares even if those press reports are unfounded. In that instance, a fund could be expected to restore its capitalization levels but may trigger delisting if its capitalization is below \$25 million for thirty consecutive trading days.

The inequities created by the proposed standard are exacerbated by the fact that closed-end funds are not eligible to follow the procedures available to most other issuers that fall below the continued listing criteria. Most issuers are provided the opportunity to provide the Exchange with a plan advising the Exchange of the steps they have taken, or plan to take, that would bring them into conformity with the continued listing standards within 18 months.

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